N. Y. 427, 466. And in this connection may be repeated the example often given, that where one commits larceny of a weapon with which to do murder, evidence of the larceny may come in during the murder trial. The point raised by the minority opinion, however, presents a more difficult question. May evidence of crimes other than the one charged and unconnected with it, but of a precisely similar nature and done for a precisely similar purpose, be admitted to prove the crime charged, if not unreasonably separated in time? It is necessary to understand exactly the limits of the problem. Acts such as are suggested in the question certainly come under the general description of acts done for a common purpose. It is to be noted, however, that the ultimate purpose or result is not the final crime, the one for which the defendant is being tried, but a fixed and constant quantity outside of all the crimes, and having an equal influence on each. In *People* v. *Zucker*, *supra*, for instance, the constant quantity is the scheme to obtain insurance money generally; the similar acts are wilfully setting fire to buildings insured. Evidence of the sort under consideration has been admitted to show intent where it determines the nature of the specific act; as whether false representations were made knowingly or not; *Reg.* v. *Francis*, L. R. 2 C. C. R. 128; or whether a building was fired by design or accident; *Commonwealth* v. *McCarty*, 119 Mass. 354. Should it ever come in as tending to prove the crime itself by means of bringing out more strongly the probable motive when there is no question as to the character of the act? The rule that what merely tends to show the defendant to be a bad man, likely to commit crime, is inadmissible, rests on obvious considerations of justice, and is not to be questioned. Whether evidence of similar acts, near in point of time, unconnected with each other, but all traceable to the one fixed purpose, must be always rejected as falling under this general rule, is in the present state of the authorities worthy the serious consideration of those who try criminal cases.

HABEAS CORPUS — FEDERAL AND STATE JURISDICTIONS. — A striking illustration of the apparently violent conflict that must occasionally arise between two jurisdictions covering the same territory, as our State and Federal courts cover almost every part of the territory of the United States, is afforded by the case *In Re Waite*, 81 Fed. Rep. 359, decided this summer in the District Court of Northern Iowa. A duly authorized pension examiner was indicted in the Iowa courts, under a statute of that State, for threatening to prosecute a person for perjury in order to compel him to sign certain papers. He was convicted; and the decision was affirmed by the Iowa Supreme Court. On his petition to the District Court, the Federal judge issued a writ of *habeas corpus* for his release from custody by the State authorities. This nullification of a decision of the highest court of a State by the summary action of a single judge in the lowest grade of the Federal courts, was justified upon the principle that the courts of the United States have jurisdiction over all acts committed by Federal officers while engaged in the performance of their duties under the laws of the United States. The acts complained of being apparently committed by this pension examiner in the general course of his duties, the question whether they were really justified by his authority, it was declared, ought to be judged only by the Federal courts. Such an assertion of this principle as the issue of the writ of *habeas corpus* in this case would probably have startled the framers of the Constitution. Yet the

process by which this result has been reached is only one out of many instances in which that instrument has been made to furnish all the authority necessary for the exigencies of the national government. Under the clause declaring that the judicial power of the United States extends "to all cases arising under the Constitution, the laws of the United States," etc., the Supreme Court has asserted in several decisions the jurisdiction of the Federal courts in all cases where the acts in question were done by an officer in the course of the performance of his duties under the laws of the United States. In *Tennessee* v. *Davis*, 100 U. S. 257, for instance, a prosecution of a revenue officer for a homicide done in the course of the performance of his duty was removed from the State to the Federal courts. The celebrated case *In Re Neagle*, 135 U. S. 1, which was a *habeas corpus* case, went further than this, or than the decision of *In Re Waite*, *supra*, inasmuch as the provision of the statute allowing the use of the writ in cases where "the party is in custody for an act done in pursuance of the Constitution and laws of the United States," etc., was extended to a case where the act was not done in pursuance of an express provision of the Constitution or a statute, but only under authority implied from the general powers conferred on the branches of the government.

It might seem that in all these cases a writ of error to the Supreme Court of the United States, after trial by the State courts, would have secured to the defendant the proper adjudication of his justification under the laws of the United States, and avoided conflict with the State courts; yet in actual experience it has proved necessary, in order to prevent the national government from being seriously hampered, even to temporary extinction, by possibly hostile State authorities imprisoning its officials, to remove such cases immediately and entirely from the control of the State courts. Whether this is done on the ground that the State courts can have originally no jurisdiction over such cases, as is declared in *Re Waite*, or on the ground that the United States courts have a paramount jurisdiction by which they can at any time displace the jurisdiction of the State courts, is perhaps hardly material, from a practical point of view. Such a proceeding must always look like a strong measure, yet will always be admitted to justify itself when perceived to be necessary for the existence of the national government.

TAXATION OF WATER POWER. — In the case of *Union Water Power Co.* v. *City of Auburn*, 37 Atl. Rep. 331 (Maine), the Supreme Court of Maine has recently decided that water power, as such, is not appurtenant to the land on which it is created, and hence cannot be taxed there. The court holds that, as the water is not property, and hence not taxable in itself, the power created by damming it is a mere "potentiality," and is to be taxed only "indirectly, in the valuation of the mill with which it is used." This case seems to be supported by the early Massachusetts case of *Boston Mfg. Co.* v. *Newton*, 22 Pick. 22, to which the court refers, and is in accord with what seems to be the trend of Massachusetts opinions upon this point. In spite of this authority, however, and of the reasoning of the court, the dissenting opinion of Emery, J. seems to be better law.

The first argument of the court is that it is impossible to tax the water power where created, because there is nothing there to tax; it can be